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**UNITED STATES DEPARTMENT OF JUSTICE**

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SARA L. KISTLER

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

**USA Commercial Mortgage Company**  
**06-10725 -- Lead Case**

**USA Capital Realty Advisors, LLC**  
06-10726

**USA Capital Diversified Trust Deed Fund, LLC**  
06-10727

**USA Capital First Trust Deed Fund, LLC**  
06-10728

**USA Securities, LLC**  
06-10729

Debtors

**Jointly Administered**

Chapter 11 Cases

Judge **Linda B. Rieggle** Presiding

Date: June 21, 2006

Time: 9:30 a.m.

Place: Courtroom # 1

**Affecting:**

☒ All Cases

**or Only:**

☐ USA Commercial Mortgage Company

☐ USA Capital Realty Advisors, LLC

☐ USA Capital Diversified Trust Deed Fund,  
LLC

☐ USA Capital First Trust Deed Fund, LLC

☐ USA Securities, LLC

**THE UNITED STATES TRUSTEE'S RESPONSE TO**

**DEBTORS' MOTION FOR ORDER**

**AUTHORIZING POST-PETITION FINANCING**

**(AFFECTS ALL CASES)**

To the Honorable **LINDA B. RIEGLE**, United States Bankruptcy Judge:

The United States Trustee submits the following for its response to the debtors' motion for approval of emergency and permanent post-petition financing. If the relief requested in the motion is granted, it will significantly and, most likely irreversibly, impact the creditors of each

1 estate, yet debtors demand immediate consideration without detailed analysis. Before the Court  
2 considers this matter for approval, the creditors and parties-in-interest should be permitted  
3 additional time for appropriate investigation and due diligence. In considering debtors' motion,  
4 the Court and parties will need to further evaluate a number of critical issues raised by the  
5 motion, including the following:

6 1. While no one has had a realistic opportunity to review or analyze debtors' schedules  
7 of assets and liabilities, it appears that the only significant assets in these estates are:

- 8 (a) USA Commercial Mortgage's rights to fees under the servicing
- 9 agreements;
- 10 (b) USA Capital Diversified Trust Deed Fund's secured notes;
- 11 (c) USA Capital First Trust Deed Fund's secured notes; and
- 12 (d) Avoidance claims under Chapter 5 of the United States Bankruptcy Code.

13 It does not appear that any creditor currently holds a secured interest in these assets, leaving  
14 them unencumbered.

15 2. Debtors are proposing to grant a security interest in the unencumbered assets of the  
16 estates.

17 3. The members of the Fund debtors will be most directly affected. They presently hold  
18 ownership interests in the Fund LLCs, which in turn hold unencumbered assets and virtually no  
19 non-insider debt. If the proposed DIP financing is approved, the unencumbered assets held by  
20 the Funds will be encumbered not for the purpose of repaying investors, but for the purpose of  
21 paying the costs of the administration of these estates, and primarily, the operating costs of  
22 debtor USA Commercial Mortgage.

23 4. Both members of the Fund debtors and creditors of USA Capital Mortgage Company  
24 (direct lenders) are at significant risk of having their interests or positions diluted by new or re-  
25 financing of existing loans.

26 5. The costs of the DIP financing proposed in debtors' motion are not estimated, and  
27 may be significant. The new lender has the right to receive reimbursement in undisclosed  
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1 amounts for due diligence, expenses and professional fees if funding occurs. There is no  
2 estimate of these costs contained in debtors' motion.

3 6. USA Commercial Mortgage is collecting and holding payments of principal and  
4 interest. It is unclear whether the motion intends to grant the proposed DIP lender a lien in these  
5 funds, which would otherwise be payable to investors.

6 7. The DIP financing proposed in Debtors' motion contemplates a "carve-out for certain  
7 professional fees and U.S. Trustee's fees." It does not appear that other administrative claims,  
8 such as post-petition employee wages and operating costs, are protected. It is also unclear which  
9 professional fees are contemplated to be included.

10 8. Upon default, interest is increased by 3%. There are also additional fees associated  
11 with collateral management, unused credit, commitment, and exit.

12 9. Prepayment is mandatory if there are "changes of control." It is unclear whether such  
13 changes would include the appointment of a trustee or examiner, conversion of one or more  
14 cases, and/or the replacement of one or more officers.

15 10. Optional prepayment is subject to unused line fees and "customary make-whole  
16 provisions." It is unclear what such customary provisions would cost the estates.

17 **WHEREFORE**, the Court should deny the motion until such time as the debtors provide  
18 the missing detail necessary to fully evaluate the propriety of the proposed DIP financing, and  
19 the Court, creditors, investors and parties in interest have had reasonable and sufficient time to  
20 properly investigate how the proposed DIP financing will impact their rights and interests.

21 Respectfully submitted,

22 **SARA L. KISTLER**  
23 **ACTING UNITED STATES TRUSTEE**  
24 **REGION 17**

25 By: /s/ August B. Landis  
26 August B. Landis, Assistant United States Trustee  
27 United States Department of Justice

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